

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Jose Miguel Hilario

v.

Case No. 14-cv-193-JL

Esker L. Tatum, Jr. et al.

REPORT AND RECOMMENDATION

Petitioner/plaintiff Jose Miguel Hilario has filed "Motion to Order Respondent and FCI Berlin's Staff Under Him to Allow the Petitioner to get Mail from the Courts, etc." (doc. no. 7). The matter has been referred to this Magistrate Judge for consideration, findings and a recommendation as to disposition. See Order (doc. no. 35).

Hilario states that he has been at FCI Berlin since April 3, 2014, and that as of the date the instant motion was filed, May 14, 2014, he had not received any mail. Hilario asserts that prison officials are (or were) withholding his mail, resulting in the deprivation of his First Amendment rights to access the courts and to association. Hilario asserts no facts to support his claim. Hilario states only that he did not receive mail, and from that draws the conclusion that FCI

officials engaged in an unconstitutional withholding of his legal and personal mail.

At this time, Hilario's responsive pleadings in this matter indicate that he is receiving mail from this Court. See e.g., Doc. Nos. 18, 19, 21, 23 and 34. Furthermore, the underlying claims in this matter do not assert any claim related to interference with mail, and that is not, therefore, the proper subject of an injunction in this case. See Lyons v. Wall, No. 08-498-ML, 2010 WL 5562272, at *2 (D.R.I. Oct. 26, 2010) (citations omitted), report and recommendation approved by No. 08-498-ML, 2011 WL 87345 (D.R.I. Jan. 10, 2011) ("[A] party moving for a preliminary injunction must establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint.").

CONCLUSION

For the foregoing reasons, the motion (doc. no. 7) for an order directing defendants to deliver mail to Hilario should be denied. Any objections to this report and recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's

order. See United States v. De Jesús-Viera, 655 F.3d 52, 57 (1st Cir. 2011), cert. denied, 132 S. Ct. 1045 (2012); Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010) (only issues fairly raised by objections to magistrate judge's report are subject to review by district court; issues not preserved by such objection are precluded on appeal).


Andrea K. Johnstone
United States Magistrate Judge

July 18, 2014

cc: Jose Miguel Hilario, pro se
T. David Plourde, Esq.